

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

45-8-344. Use of firearms by children under fourteen prohibited - exceptions. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor or an adult who has been authorized by the parent or guardian.

45-8-345. Criminal liability of parent or guardian - prosecution.

(1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

45-8-351. Restriction on local government regulation of firearms.

(1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed

carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2)(a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

45-8-360. Establishment of individual licensure. In consideration that the right to keep and bear arms is protected and reserved to the people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act.

45-8-361. Possession or allowing possession of weapon in school building - exceptions - penalties - seizure and forfeiture or return authorized - definitions.

(1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3)(a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4)(a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration that are available in the community.

(b)(i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nunchucks, or brass or other metal knuckles. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

45-8-406. Supplying of firearms to criminal street gang.

(1) A person commits the offense of supplying firearms to a criminal street gang if the person purposely or knowingly supplies, sells, or gives possession or control of any firearm to another, and the person has actual knowledge that the other person will use the firearm to commit an offense enumerated in 45-8-405 while actively participating in any criminal street gang whose members engage in a pattern of criminal street gang activity.

(2) Subsection (1) does not apply to a person who is convicted as a principal to the offense committed by the person to whom the firearm was supplied, sold, or given.

(3) A person convicted of the offense of supplying firearms to a criminal street gang shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

[Current through the 2000 Special Session]

NEBRASKA

NEB. REV. STAT.

Chapter 28. Crimes and Punishment

Article 12. Offenses Against Public Health and Safety

28-1201. Terms, defined. For purposes of sections 28-1201 to 28-1212, unless the context otherwise requires:

(1) Firearm shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice shall mean any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Juvenile shall mean any person under the age of eighteen years;

(4) Knife shall mean any dagger, dirk, knife, or stiletto with a blade over three and one-half

inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;

(5) Knuckles and brass or iron knuckles shall mean any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(6) Machine gun shall mean any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(7) Short rifle shall mean a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(8) Short shotgun shall mean a shotgun having a barrel or barrels less than eighteen inches

long or an overall length of less than twenty-six inches.

28-1202. Carrying concealed weapon; penalty; affirmative defense.

(1) Except as provided in subsection (2) of this section, any person who carries a weapon or weapons concealed on or about his or her person such as a revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other deadly weapon commits the offense of carrying a concealed weapon.

(2) It shall be an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

28-1203. Transportation or possession of machine guns, short rifles, or short shotguns; penalty; exception.

(1) Any person or persons who shall transport or possess any machine gun, short rifle, or short shotgun commits a Class IV felony.

(2) The provisions of this section shall not be held to prohibit any act by peace officers, members of the United States armed services, or members of the National Guard of this state, in the lawful discharge of their duties, or persons qualified under the provisions of federal law relating to the short rifle, short shotgun, or machine gun.

28-1204. Unlawful possession of a revolver; exceptions; penalty.

(1) Any person under the age of eighteen years who possesses a pistol, revolver, or any other form of short-barreled hand firearm commits the offense of unlawful possession of a revolver.

(2) The provisions of this section shall not apply to the issuance of such firearms to members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of pistols, revolvers, or any other form of short-barreled firearms for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a revolver is a Class III misdemeanor.

28-1204.01. Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.

(1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section shall not apply to the transfer of a firearm other than the types specified in section 28-1204 to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section shall apply to the transfer of any firearm described in section 28-1204, except as specifically provided in subsection (2) of section 28-1204.

(4) Unlawful transfer of a firearm to a juvenile is a Class IV felony.

28-1204.02. Confiscation of firearm; disposition. Any firearm in the possession of a person in violation of section 28-1204 or 28-1204.01 shall be confiscated by a peace officer or other authorized law enforcement officer. Such firearm shall be held by the agency employing such officer until it no longer is required as evidence.

28-1204.04. Unlawful possession of a firearm on school grounds; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be guilty of the offense of unlawful possession of a firearm on school grounds. Unlawful possession of a firearm on school grounds is a Class IV misdemeanor. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, or (c) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle. For purposes of this subsection, encased shall mean enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zippered, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a revolver in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm on school

grounds. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds deposited in the permanent school fund.

28-1205. Using a deadly weapon to commit a felony; penalty; separate and distinct offense.

(1) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state or who unlawfully possesses a firearm, a knife, brass or iron knuckles, or any other deadly weapon during the commission of any felony which may be prosecuted in a court of this state commits the offense of using a deadly weapon to commit a felony.

(2)(a) Use of a deadly weapon other than a firearm to commit a felony is a Class III felony.

(b) Use of a deadly weapon which is a firearm to commit a felony is a Class II felony.

(3) The crimes defined in this section shall be treated as separate and distinct offenses from the felony being committed, and sentences imposed under this section shall be consecutive to any other sentence imposed.

28-1206. Possession of a deadly weapon by a felon or a fugitive from justice; penalty.

(1) Any person who possesses any firearm or brass or iron knuckles and who has previously been convicted of a felony or who is a fugitive from justice commits the offense of possession of a deadly weapon by a felon or a fugitive from justice.

(2) Such felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon other than a firearm by a felon or a fugitive from justice is a Class IV felony.

(b) Possession of a deadly weapon which is a firearm by a felon or a fugitive from justice is a Class III felony.

28-1207. Possession of a defaced firearm; penalty.

(1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class IV felony.

28-1208. Defacing a firearm; penalty.

(1) Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm.

(2) Defacing a firearm is a Class IV felony.

28-1209. Failure to register tranquilizer guns; penalty.

(1) Any person who fails or neglects to register any gun or other device designed, adapted or used for projecting darts or other missiles containing tranquilizers or other chemicals or compounds which will produce unconsciousness or temporary disability in live animals, with the county sheriff of the county in which the owner of the gun or device resides, commits the offense of failure to register tranquilizer guns.

(2) Failure to register tranquilizer guns is a Class III misdemeanor.

28-1210. Failure to notify the sheriff of the sale of tranquilizer guns; penalty; record.

(1) Any person, partnership, limited liability company, or corporation selling any gun or other device as described in section 28-1209 which fails to immediately notify the sheriff of the county of the sale and giving the name and address of the purchaser thereof and the make and number of the gun or device commits the offense of failure to notify the sheriff of the sale of tranquilizer guns.

(2) The sheriff shall keep a record of such sale with the information furnished pursuant to this section.

(3) Failure to notify the sheriff of the sale of tranquilizer guns is a Class III misdemeanor

28-1211. Firearms; purchase, sell, trade, or convey; conditions. The State of Nebraska herewith permits its residents, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearm accessories in Nebraska and in states contiguous to Nebraska. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922(b), (3)(A) of Public Law 90-618 of the 90th Congress, Second Session. In the event that presently enacted federal restrictions on the purchase of rifles, shotguns, ammunition, reloading components, or firearm accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, this section shall in no way be interpreted to prohibit or restrict the purchase of shotguns, rifles, ammunition, reloading components, or firearm accessories by residents of Nebraska otherwise competent to purchase same in contiguous or other states.

28-1212.03. Stolen firearm; prohibited acts; violation; penalty. Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class IV felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

28-1213. Explosives, destructive devices, other terms; defined. For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person shall mean any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

(2) Business enterprise shall mean any corporation, partnership, limited liability company, company, or joint-stock company;

(3) Explosive materials shall mean explosives, blasting agents, and detonators;

(4) Explosives shall mean any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but shall not include common fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent shall mean any material or mixture, intended for blasting which meets the requirements of the federal Hazardous Material Regulations, 49 C.F.R. part 173, subpart C;

(6) Detonator shall mean any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator shall include an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;

(7) Destructive devices shall mean:

(a) Any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, (vi) booby trap, (vii) Molotov cocktail, (viii) bottle bomb, or (ix) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(b) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7)(a) of this section from which a destructive device may be readily assembled. The term destructive device shall not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee shall mean any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40;

(9) Federal licensee shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40; and

(10) Smokeless propellants shall mean solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

28-1214. Explosives control; applicability of sections.

(1) Sections 28-1213 to 28-1239 shall apply to persons engaged in the manufacture, ownership, possession, storage, use, transportation, purchase, sale, or gift of explosive materials, except as may be otherwise indicated herein.

(2) Sections 28-1213 to 28-1239 shall not apply to explosive materials while being transported in conformity with federal law or regulations, nor, except as may be otherwise provided in such sections, to the ownership, possession, storage, use, transportation, purchase, or sale of explosive materials by the armed forces of the United States, the National Guard, other reserve components of the armed forces of the United States, and the duly constituted police and fire-fighting forces of the United States and of the state and its political subdivisions in the lawful discharge of their official duties.

28-1215. Unlawful possession of explosive materials, first degree; exception; penalty.

(1) Except as provided in subsection (2) of this section, any person who is ineligible to obtain a permit from the Nebraska State Patrol and who possesses or stores explosive materials commits the offense of unlawful possession of explosive materials in the first degree.

(2) Subsection (1) of this section shall not be applicable to any person transporting explosive materials in accordance with section 28-1235 or to any person who has obtained a permit from the Nebraska State Patrol to store or use such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials.

(3) Unlawful possession of explosive materials in the first degree is a Class IV felony.

28-1216. Unlawful possession of explosive materials, second degree; penalty.

(1) Except as provided in subsection (2) of this section, any person who is eligible to obtain a permit from the Nebraska State Patrol or has valid educational, industrial, commercial, agricultural, or other legitimate need for a permit and who possesses or stores explosive materials without such a permit commits the offense of unlawful possession of explosive materials in the second degree.

(2) The exclusions provided in subsection (2) of section 28-1215 shall be applicable to this section.

(3) Unlawful possession of explosive materials in the second degree is a Class I misdemeanor.

28-1217. Unlawful sale of explosives; penalty.

(1) Any person who knowingly and intentionally sells, transfers, issues, or gives any explosive materials to any person who does not display a valid permit issued by the Nebraska State Patrol authorizing the storage or use of such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials commits the offense of unlawful sale of explosives.

(2) Unlawful sale of explosives is a Class IV felony.

28-1220. Possession of a destructive device; penalty; permit or license for explosive materials; no defense.

(1) Any person who has in his possession a destructive device, as defined in subdivision (7) of section 28-1213, commits the offense of possession of a destructive device.

(2) A permit or license issued under any state or federal law to possess, own, use, distribute, sell, manufacture, store, or handle in any manner explosive materials shall not be a defense to the crime of possession of a destructive device as defined in this section.

(3) Possession of a destructive device is a Class IV felony.

28-1226. Failure to report theft of explosives; penalty.

(1) Any person who has knowledge of the theft or loss of explosive materials from his or her stock who fails to report such theft or loss within twenty-four hours of discovery to the Nebraska State Patrol commits the offense of failure to report theft of explosives.

(2) Failure to report theft of explosives is a Class III misdemeanor.

28-1239. Explosives control; exceptions to sections; enumerated. In addition to the exceptions provided in sections 28-1213 to 28-1239, such sections shall not apply to:

(1) The use of explosive materials in medicines and medicinal agents in forms prescribed by the official United States Pharmacopoeia or the National Formulary;

(2) The sale, transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any state or political subdivision thereof;

(3) Small arms ammunition and components thereof;

(4) The storage or possession of or dealing in black powder used for recreation purposes by a sportsperson;

(5) The storage or possession of or dealing in smokeless propellants, percussion caps, primers, and other components used by a sportsperson in the reloading of small arms ammunition;

(6) Bona fide war trophies capable of exploding and innocently found explosive materials possessed under circumstances negating an intent to use the same unlawfully, but the owner thereof shall surrender such items forthwith to any nationally certified hazardous device technician or military explosive ordnance expert upon demand by a law enforcement officer or agency or fire department; and

(7) The storage in minimum amounts necessary for lawful educational purposes of explosive materials to be used in the natural science laboratories of any state-accredited school system.

Chapter 69. Personal Property

Article 24. Handguns

69-2401. Legislative findings and declarations. The Legislature hereby finds and declares that the state has a valid interest in the regulation of the purchase, lease, rental, and transfer of handguns and that requiring a certificate prior to the purchase, lease, rental, or transfer of a handgun serves a valid public purpose.

69-2402. Terms, defined. For purposes of sections 69-2401 to 69-2425:

(1) Antique handgun or pistol shall mean any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(2) Handgun shall mean any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand.

69-2403. Sale, lease, rental, and transfer; certificate required; exceptions. Except as provided in section 69-2409, a person shall not purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate in accordance with section 69-2404. Except as provided in section 69-2409, a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained a certificate. The certificate shall not be required if:

(1) The person acquiring the handgun is a licensed firearms dealer under federal law;

(2) The handgun is an antique handgun;

(3) The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;

(4) The transfer is a temporary transfer of a handgun and the transferee remains (a) in the

line of sight of the transferor or (b) within the premises of an established shooting facility; or

(5) The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent.

69-2404. Certificate; application; fee. Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, social security number, address, and date of birth. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

69-2405. Application; chief of police or sheriff; duties; immunity. Upon the receipt of an application for a certificate, the chief of police or sheriff shall issue a certificate or deny a certificate and furnish the applicant the specific reasons for the denial in writing. The chief of police or sheriff shall be permitted up to two days in which to conduct an investigation to determine whether the applicant is prohibited by law from purchasing or possessing a handgun. If the certificate or denial is mailed to the applicant, it shall be mailed to the applicant's address by first-class mail within the two-day period. If it is determined that the purchase or possession of a handgun by the applicant would be in violation of applicable federal, state, or local law, the chief of police or sheriff shall deny the certificate. In computing the two-day period, the day of receipt of the application shall not be included and the last day of the two-day period shall be included. The two-day period shall expire at 11:59 p.m. of the second day unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until 11:59 p.m. of the next day which is not a Saturday, Sunday, or legal holiday. No later than the end of the two-day period the chief of police or sheriff shall issue or deny such certificate and, if the certificate is denied, furnish the applicant the specific reasons for denial in writing. No civil liability shall arise to any law enforcement agency if such law enforcement agency complies with sections 69-2401, 69-2403 to 69-2408, and 69-2409.01.

69-2406. Certificate; denial or revocation; appeal; filing fee. Any person who is denied a certificate, whose certificate is revoked, or who has not been issued a certificate upon expiration of the two-day period may appeal within ten days of receipt of the denial or revocation to the county court of the county of the applicant's place of residence. The applicant shall file with the court the specific reasons for the denial or revocation by the chief of police or sheriff and a filing fee of ten dollars in lieu of any other filing fee required by law. The court shall issue its decision within thirty days of the filing of the appeal.

69-2407. Certificate; contents; term; revocation. A certificate issued in accordance with section 69-2404 shall contain the holder's name, social security number, address, and date of birth and the effective date of the certificate. A certificate shall authorize the holder to acquire any number of handguns during the period that the certificate is valid. The certificate shall be valid throughout the state and shall become invalid three years after its effective date. If the chief of police or sheriff who issued the certificate determines that the applicant has become disqualified for the certificate under section 69-2404, he or she may immediately revoke the certificate and require the holder to surrender the certificate immediately. Revocation may be appealed pursuant to section 69-2406.

69-2408. False information on application; other violations; penalties; confiscation of handgun. Any person who willfully provides false information on an application form for a certificate under section 69-2404 shall, upon conviction, be guilty of a Class IV felony, and any person who intentionally violates any other provision of sections 69-2401, 69-2403 to 69-2407, and 69-2409.01 shall, upon conviction, be guilty of a Class I misdemeanor. As a part of the judgment of conviction, the court may order the confiscation of the handgun.

69-2409. Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election. It is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of upgrading Nebraska's automated criminal history files to be utilized for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1, 1995.

The patrol's automated arrest and conviction records shall be reviewed annually by the Superintendent of Law Enforcement and Public Safety who shall report the status of such records within thirty days of such review to the Governor and the Clerk of the Legislature. The instant criminal history record check system shall be implemented by the patrol on or after January 1, 1995, when, as determined by the Superintendent of Law Enforcement and Public Safety, eighty-five percent of the Nebraska arrest and conviction records since January 1, 1965, available to the patrol are included in the patrol's automated system. Not less than thirty days prior to implementation and enforcement of the instant check system, the patrol shall send written notice to all licensed importers, manufacturers, and dealers outlining the procedures and toll-free number described in sections 69-2410 to 69-2423.

Upon implementation of the instant criminal history record check system, a person who desires to purchase, lease, rent, or receive transfer of a handgun from a licensed importer, manufacturer, or dealer may elect to obtain such handgun either under sections 69-2401, 69-2403 to 69-2408, and 69-2409.01 or under sections 69-2409.01 and 69-2410 to 69-2423.

69-2410. Importer, manufacturer, or dealer; sale or delivery; duties. No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1)(a) Inspected a valid certificate issued to such person pursuant to sections 69-2401, 69-2403 to 69-2408, and 69-2409.01; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2)(a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include only the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

69-2411. Request for criminal history record check; Nebraska State Patrol; duties; fee.

(1) Upon receipt of a request for a criminal history record check, the Nebraska State Patrol shall as soon as possible during the licensee's telephone call or by return telephone call:

(a) Review its criminal history records to determine if the potential buyer or transferee is prohibited from receipt or possession of a handgun pursuant to state or federal law; and

(b) Either (i) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (ii) provide the licensee with a unique approval number.

(2) In the event of electronic failure or similar emergency beyond the control of the Nebraska State Patrol, the patrol shall immediately notify a requesting licensee of the reason for and estimated length of such delay. In any event, no later than the end of the next business day the Nebraska State Patrol shall either (a) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (b) provide the licensee with a unique approval number. If the licensee is not informed by the end of the next business day that the potential buyer is prohibited from receipt or possession of a handgun, and regardless of whether the unique approval number has been received, the licensee may complete the sale or delivery and shall not be deemed to be in violation of sections 69-2410 to 69-2423 with respect to such sale or delivery.

(3) A fee of three dollars shall be charged for each request of a criminal history record check required pursuant to section 69-2410, which amount shall be transmitted monthly to the Nebraska State Patrol. Such amount shall be for the purpose of covering the costs of the criminal history record check.

69-2413. Nebraska State Patrol; toll-free telephone number; personnel. The Nebraska State Patrol shall establish a toll-free telephone number which shall be operational seven days a week between 8 a.m. and 10 p.m. for purposes of responding to requests under section 69-2410. The Nebraska State Patrol shall employ and train such personnel as is necessary to

expeditiously administer the provisions of sections 69-2410 to 69-2423.

69-2414. Records; amendment; procedure. Any person who is denied the right to purchase or receive a handgun as a result of procedures established by sections 69-2410 to 69-2423 may request amendment of the record pertaining to him or her by petitioning the Nebraska State Patrol. If the Nebraska State Patrol fails to amend the record within seven days, the person requesting the amendment may petition the county court of the county in which he or she resides for an order directing the patrol to amend the record. If the person proves by a preponderance of the evidence that the record should be amended, the court shall order the record be amended. If the record demonstrates that such person is not prohibited from receipt or possession of a handgun by state or federal law, the Nebraska State Patrol shall destroy any records it maintains which contain any information derived from the criminal history record check.

69-2416. Licensed importer, manufacturer, or dealer; compliance not required; when. A licensed importer, manufacturer, or dealer shall not be required to comply with the provisions of subdivision (2) of section 69-2410 and sections 69-2411 to 69-2423 in the event of:

(1) Unavailability of telephone service at the licensed premises due to (a) the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises due to the location of such premises or (b) the interruption of telephone service by reason of hurricane, flood, natural disaster, other act of God, war, riot, or other bona fide emergency or reason beyond the control of the licensee; or

(2) Failure of the Nebraska State Patrol to comply reasonably with the requirements of sections 69-2410 to 69-2423.

69-2417. Nebraska State Patrol; licensee; liability defense; when. Compliance with sections 69-2410 to 69-2423 shall be a defense by the Nebraska State Patrol and the licensee transferring a handgun in any cause of action under the laws of this state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer, of any handgun which has been shipped or transported in interstate or foreign commerce to any person who has been convicted in any court of any crime punishable by a term of more than one year.

69-2418. Instant criminal history record check; requirements; exemptions. Sections 69-2410 to 69-2423 shall not apply to:

(1) Any handgun, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898;

(2) Any replica of any firearm described in subdivision (1) of this section if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition and uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(3) Any firearm which is a curio or relic as defined by 27 C.F.R. 178.11.

69-2419. Criminal history records; prohibited acts; violation; penalty. Any licensed importer, manufacturer, or dealer who knowingly

and intentionally requests a criminal history record check from the Nebraska State Patrol for any purpose other than compliance with sections 69-2410 to 69-2423 or knowingly and intentionally disseminates any criminal history record information to any person other than the subject of such information shall be guilty of a Class I misdemeanor.

69-2420. False statement; false identification; prohibited acts; violation; penalty. Any person who, in connection with the purchase, transfer, or attempted purchase of a handgun pursuant to sections 69-2410 to 69-2423, knowingly and intentionally makes any materially false oral or written statement or knowingly and intentionally furnishes any false identification intended or likely to deceive the licensee shall be guilty of a Class IV felony.

69-2421. Sale or delivery; violation; penalty. Any licensed importer, manufacturer, or dealer who knowingly and intentionally sells or delivers a handgun in violation of sections 69-2401 to 69-2425 shall be guilty of a Class IV felony.

69-2422. Obtaining handgun for prohibited transfer; violation; penalty. For purposes of sections 69-2401 to 69-2425, any person who knowingly and intentionally obtains a handgun for the purposes of transferring it to a person who is prohibited from receipt or possession of a handgun by state or federal law shall be guilty of a Class IV felony.

69-2424. Rules and regulations. The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out sections 69-2401 to 69-2425.

69-2425. City or village ordinance; not preempted. Any city or village ordinance existing on September 6, 1991, shall not be preempted by sections 69-2401 to 69-2425.

69-2426. Dealers of firearms; distribution of information; Firearm Information Fund; created.

(1) Dealers of firearms shall distribute to all purchasers information developed by the Department of Health and Human Services regarding the dangers of leaving loaded firearms unattended around children.

(2) There is hereby created the Firearm Information Fund. Private contributions shall be credited by the State Treasurer to such fund for the implementation of the provisions of this section.

[Current through 2000 Legislative Session]

Publisher's Notes:

The following jurisdictions restrict the age at which it is lawful for a person to purchase or receive a firearm: Kearney, Lincoln, and Omaha.

Omaha prohibits the possession of machine guns.

Omaha requires that a permit be obtained by a purchaser or recipient before a firearm may be sold or rented.

Omaha requires a permit and recordkeeping to sell firearms and requires permits for firearms exhibitions.